

United States Department of the Interior

National Park Service

Midwest Region 601 Riverfront Drive Omaha, Nebraska 68102-4226



1 5 0CT **2010** L6015(MWRO-PCL/PC)

Mr. Derrell Turner Administrator, Minnesota Division Federal Highway Administration 380 Jackson Street Galtier Plaza, Suite 500 St. Paul, Minnesota 55101-4802

Dear Mr. Turner:

Enclosed please find the National Park Service's revised Section 7(a) evaluation and determination under the Wild and Scenic Rivers Act (Act) for the St. Croix River Crossing Project (Project). The National Park Service (NPS) has determined that the Project would have direct and adverse effects on the outstandingly remarkable scenic and recreational values for which the Lower St. Croix National Scenic Riverway was designated as part of the National Wild and Scenic Rivers System.

Our 2005 Section 7(a) evaluation previously found that the direct and adverse impacts could be adequately offset by the Project mitigation package. On March 11, 2010, the U.S. District Court of Minnesota decided that our 2005 Section 7(a) evaluation was arbitrary and capricious. In response to your April 6, 2010 request that the NPS prepare a new Section 7(a) evaluation for the Project, taking into account the concerns expressed by the court, the NPS reviewed the Act and available guidance to ensure that appropriate standards were followed. The NPS also took a fresh look at the proposed Project and prepared the enclosed evaluation and determination based on a new visual analysis of the proposed bridge. Staff of the NPS Servicewide Wild and Scenic Rivers Program assisted with this review. The Servicewide program was established to help ensure the NPS is consistent in meeting responsibilities under the Act.

Section 7(a) of the Act states that:

"...no department or agency of the United States shall assist by loan, grant, license, or otherwise in the construction of any water resources project that would have a direct and adverse effect on the values for which such river was established ...as determined by the Secretary charged with its administration."

As a result of the review of the Act and available guidance, and in consultation with the Interagency Wild and Scenic Rivers Coordinating Council, the NPS concluded that if it determined that the Project has direct and adverse effects on the values for which the river was designated as part of the National Wild and Scenic Rivers System, and those impacts could not be avoided or eliminated, then the NPS cannot consent to the Project. The NPS has concluded



that compensating for an impact by improving resource conditions elsewhere does not change the existence of the direct and adverse effect. Likewise, minimizing a direct and adverse effect so that it is smaller, but still considered adverse, is not sufficient to allow the Project to move forward under the Act. Additional information about our review is included in the enclosed Section 7(a) document.

Although the NPS worked closely as a cooperating agency in the environmental review process with other parties through the process recommended by the U.S. Institute for Environmental Conflict Resolution, the NPS did not give up its decision-making authority under Section 7(a) of the Act. The Institute's mediation process produced a recommended alternative, including a package of mitigation measures that the states of Minnesota and Wisconsin supported as the preferred alternative in the final environmental impact statement the Federal Highway Administration (FHWA) affirmed in its Record of Decision in 2006.

While the NPS believes the mitigation measures are not sufficient to eliminate the direct and adverse effects of the Project on the Lower St. Croix National Scenic Riverway's designated scenic and recreational values, the NPS strongly supports their implementation if Congressional action is taken to allow the Project to move forward. The mitigation measures are essential to meet the requirements of Section 4(f) of the Department of Transportation (DOT) Act and help the States of Minnesota and Wisconsin protect and enhance river values under Section 10(a) of the Act. As you know, the DOT Act includes Section 4(f) which stipulates that the FHWA and other DOT agencies cannot approve the use of land from publicly owned parks, recreational areas, and other similar areas, unless there is no feasible and prudent alternative and the action includes all possible planning to minimize harm.

Although the Act precludes authorization of a project that a river administering agency has determined will cause direct and adverse effects on a designated river, the FHWA can initiate a Congressional process for authorizing this specific Project in accordance with a provision provided under Section 7(a), as follows:

"....No department or agency of the United States shall recommend authorization of any water resources project that would have a direct and adverse effect on the values for which such river was established, as determined by the Secretary charged with its administration, or request appropriations to begin construction of any such project, whether heretofore or hereafter authorized, without advising the Secretary of the Interior....in writing of its intention to do so at least sixty days in advance, and without specifically reporting to the Congress in writing at the time it makes its recommendation or request in what respect construction of such project would be in conflict with the purposes of this Act and would affect the component and the values to be protected by it under this Act...."

This process requires you to notify the Secretary of the Interior sixty days in advance of requesting authorization or appropriations for the Project from Congress. If you decide to seek Congressional action to move the Project forward, this letter and the accompanying Section 7(a) determination may be used to explain how the Project is in conflict with the Act as required by Section 7(a).

As a result of the highly public nature of this Project, the NPS has a continuing interest in ensuring the planning and evaluation process remains public and transparent. To this end, the NPS will make our evaluation available to the public subsequent to its receipt by the FHWA. Should you have any questions or comments, please direct them to the Office of the Superintendent of St. Croix National Scenic Riverway at 715-483-2291 or SACN_Superintendent@nps.gov.

Sincerely,

Ernest Quintana Regional Director

Enclosure